

**NOTICE OF APPEAL TO A COURT OF APPEALS
FROM AN ORDER OF A
DISTRICT COURT**

United States District Court for the Northern
District of Illinois

File Number: 08-cv-0058
Consolidated with 08-cv-1313

JAY FRANCO & SONS, Inc.,)	
)	
Plaintiff/Appellee,)	
)	
v.)	Case No: 08-CV-0058
)	
CLEMENS FRANEK,)	
)	
Defendant/Appellant.)	

CLEMENS, FRANEK,)	
)	
Plaintiff,)	
)	Case No: 08-cv-0058
WALMART STORES, INC., an)	
)	
TARGET CORPORATION)	
)	
Defendant.)	

NOTICE OF APPEAL

Notice is hereby given that Clemens Franek, the Defendant in consolidated case no. 08-cv-1313 and Plaintiff in case no. 08-cv-0058, hereby appeals to the United States Court of Appeals for the Seventh Circuit from an order dated August 25, 2008 denying Franek's Motion to File a Sur-Reply Brief and from an order granting Jay Franco & Sons Inc.'s Motion for Partial Summary Judgment entered in this action on the 13th day of March, 2009 and made final and appealable by an order entered on the 31st day of March, 2009.

/s/ Mark D. Roth

Mark D. Roth, Attorney for Appellant

Mark D. Roth (ARDC#6196815)
Beata Bukranova (ARDC#6282593)
ORUM & ROTH, LLC
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SEVENTH CIRCUIT COURT OF APPEALS INFORMATION SHEET

Include the names of all plaintiffs (petitioners) and defendants (respondents) who are parties to the appeal. Use a separate sheet if needed.

NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION DOCKET NUMBER: 08 cv 58

PLAINTIFF (Petitioner)

v.

DEFENDANT (Respondent)

Clemens Franek /appellant

Walmart Stores, Inc /appellee

(Use separate sheet for additional counsel)

PETITIONER'S COUNSEL		RESPONDENT'S COUNSEL	
Name	Mark Daniel Roth	Name	David A. Roodman
Firm	Orum & Roth ,LLC	Firm	Bryan Cave, LLP
Address	53 West Jackson Boulevard Chicago, Illinois 60604	Address	211 North Broadway Suite 3600 St. Louis, MO 63102
Phone	312-922-6262	Phone	314-259-2614

Other Information			
District Judge	Honorable Robert M. Dow, Jr	Date Filed in District Court	1/3/08
Court Reporter	Lois Lacorte/ ext 5558	Date of Judgment	3/31/09
Nature of Suit Code	840	Date of Notice of Appeal	4/28/09

COUNSEL:

Appointed

☐

Retained

☒

Pro Se

☐

FEE STATUS:

Paid

☒

Due

☐

IFP

☐

IFP Pending

☐

U.S.

☐

Waived

☐

Has Docketing Statement been filed with the District Court Clerk's Office?

Yes

☐

No

☒

If State/Federal Habeas Corpus (28 USC 2254/28 USC 2255), was Certificate of Appealability:

Granted

☐

Denied

☐

Pending

☐

If Certificate of Appealability was granted or denied, date of order:

If defendant is in federal custody, please provide U.S. Marshall number (USM#):

IMPORTANT: THIS FORM IS TO ACCOMPANY THE SHORT RECORD SENT TO THE CLERK OF THE U.S. COURT OF APPEALS PURSUANT TO CIRCUIT RULE 3(A). Rev 04/01

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.2.2
Eastern Division**

Clemens Franek

Plaintiff,

v.

Case No.: 1:08-cv-00058

Honorable Robert M. Dow Jr.

Walmart Stores, Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, March 13, 2009:

MINUTE entry before the Honorable Robert M. Dow, Jr: Pursuant to Memorandum Opinion and Order dated 3/13/09, Plaintiffs motion for partial summary judgment [41] is granted as to Count II of its Complaint for Declaratory Judgment and Other Relief and Franeks U.S. Trademark Registration No. 1,502,261 is invalid as functional. Plaintiffs motion for summary judgment [41] is also granted as to Counts I through IV of Clemens Franeks Counterclaims against Jay Franco & Sons. Mailed notice(tbk,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

United States District Court
Northern District of Illinois
Eastern Division

Clemens Franek

JUDGMENT IN A CIVIL CASE

v.

Case Number: 08 C 58

Walmart Stores, Inc., et al

- ☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.
- ☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that pursuant to Memorandum Opinion and Order dated 3/13/09, Plaintiff, Clemens Franek's motion for partial summary judgment [41] is granted as to Count II of its Complaint for Declaratory Judgment and Other Relief and Franek's U.S. Trademark Registration No. 1,502,261 is invalid as functional. Plaintiff's motion for summary judgment [41] is also granted as to Counts I through IV of Clemens Franek's Counterclaims against Jay Franco & Sons.

Pursuant to Minute Order dated 3/30/09, the Court clarifies that (i) the March 13, 2009 memorandum opinion and order is final and appealable, (ii) Counts I, III, IV, and V of Franco's complaint are dismissed without prejudice as moot, and (iii) Counts I, II, and III of Franek's complaint against Walmart and Target likewise are dismissed without prejudice as moot.

Michael W. Dobbins, Clerk of Court

Date: 3/31/2009

/s/ Theresa B. Kinney, Deputy Clerk

AO279, APPEAL, CONSALL, MEDIATION, TERMED, VALDEZ

United States District Court
Northern District of Illinois - CM/ECF LIVE, Ver 3.2.2 (Chicago)
CIVIL DOCKET FOR CASE #: 1:08-cv-00058
Internal Use Only

Franek v. Walmart Stores, Inc. et al
Assigned to: Honorable Robert M. Dow, Jr
Cause: 15:1114 Trademark Infringement

Date Filed: 01/03/2008
Date Terminated: 03/31/2009
Jury Demand: Both
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff**Clemens Franek**

represented by **Mark Daniel Roth**
Orum & Roth, LLC
53 West Jackson Boulevard
Chicago , IL 60604
(312) 922-6262
Email: markdroth@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Walmart Stores, Inc.**

represented by **David A. Roodman**
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211 North Broadway
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St. Louis , MO 63102
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ATTORNEY TO BE NOTICED

Mark A. Paskar

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ATTORNEY TO BE NOTICED

Defendant

Target Corporation

represented by **Larry L. Saret**
Michael Best & Fredrich LLP
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180 North Stetson Avenue #2000
Chicago , IL 60601
(312)222-0800
Fax: (312) 222-0818
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ATTORNEY TO BE NOTICED

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Email: geespinoza@michaelbest.com
ATTORNEY TO BE NOTICED

Counter Defendant

Jay Franco & Sons, Inc.

represented by **Ezra Sutton**
Ezra Sutton, PA
900 Route 9 North
Woodbridge , NJ 07095
732 634 3520
Email: esutton@ezrasutton.com
ATTORNEY TO BE NOTICED

Counter Claimant

Target Corporationrepresented by **Larry L. Saret**

(See above for address)

LEAD ATTORNEY**ATTORNEY TO BE NOTICED****Arthur Gollwitzer , III**

(See above for address)

ATTORNEY TO BE NOTICED**Gilberto Eduardo Espinoza**

Michael Best & Friedrich LLP

Two Prudential Plaza

180 N. Stetson Avenue, Suite 2000

Chicago , IL 60601

312-596-5802

Email: geespinoza@michaelbest.com

ATTORNEY TO BE NOTICED**Counter Claimant****Clemens Franek**represented by **Mark Daniel Roth**

(See above for address)

LEAD ATTORNEY**ATTORNEY TO BE NOTICED****Counter Claimant****Clemens Franek**represented by **Mark Daniel Roth**

(See above for address)





LEAD ATTORNEY**ATTORNEY TO BE NOTICED**


















V.














Counter Defendant**Jay Franco & Sons, Inc.**represented by **Ezra Sutton**













(See above for address)











ATTORNEY TO BE NOTICED







Date Filed	#	Docket Text
01/03/2008	 1	COMPLAINT filed by Clemens Franek; Jury Demand. Filing fee \$ 350. (gmr,) (Entered: 01/04/2008)
01/03/2008	 2	CIVIL Cover Sheet. (gmr,) (Entered: 01/04/2008)
01/03/2008	 3	ATTORNEY Appearance for Plaintiff Clemens Franek by Mark Daniel Roth. (gmr,) (Entered: 01/04/2008)
01/03/2008	 4	(Court only) RECEIPT regarding payment of filing fee paid on 1/3/2008 in the amount of \$350.00, receipt number 1116115. (gmr,) (Entered: 01/04/2008)













01/04/2008		MAILED trademark report to Patent Trademark Office, Alexandria, VA. (gmr,) (Entered: 01/04/2008)
01/04/2008		MAILED Lanham Act Package to Plaintiff's counsel. (gmr,) (Entered: 01/04/2008)
01/28/2008	 5	MINUTE entry before Judge Robert M. Dow Jr.:Status hearing is set March 5, 2008 at 9:00 a.m. and at least one week prior to the initial status conference, the parties are directed to file a joint written status report of not more than five pages (see Judge Dow's web page for Standing Order Regarding Initial Status Reports). At the initial status conference, counsel will be asked to discuss (i) the nature of the case; (ii) factual and legal issues; (iii) settlement discussions to date and settlement potential; (iv) discovery taken to date and anticipated in the future; and (v) potential motions to be filed. Mailed notice (tbk,) (Entered: 01/28/2008)
01/28/2008	 6	CONSENT to Mediation by Clemens Franek(Roth, Mark) (Entered: 01/28/2008)
01/28/2008	 7	NOTICE by Clemens Franek re consent to mediation 6 & <i>Certificate of Compliance with Local Rule 16.3</i> (Roth, Mark) (Entered: 01/28/2008)
02/07/2008	 8	ATTORNEY Appearance for Defendant Target Corporation by Larry L. Saret (Saret, Larry) (Entered: 02/07/2008)
02/07/2008	 9	ATTORNEY Appearance for Defendant Target Corporation by Arthur Gollwitzer, III (Gollwitzer, Arthur) (Entered: 02/07/2008)
02/07/2008	 10	ATTORNEY Appearance for Defendant Target Corporation by Gilberto Eduardo Espinoza (Espinoza, Gilberto) (Entered: 02/07/2008)
02/07/2008	 11	CERTIFICATE by Target Corporation of Compliance with Procedures for Voluntary Mediation Program for Lanham Act Cases (Saret, Larry) (Entered: 02/07/2008)
02/19/2008	 12	ATTORNEY Appearance for Defendant Walmart Stores, Inc. by David A. Roodman (Roodman, David) (Entered: 02/19/2008)
02/19/2008	 13	ATTORNEY Appearance for Defendant Walmart Stores, Inc. by Mark A. Paskar (Paskar, Mark) (Entered: 02/19/2008)
02/19/2008	 14	ATTORNEY Appearance for Defendant Walmart Stores, Inc. by Jena M. Valdetero (Valdetero, Jena) (Entered: 02/19/2008)
02/19/2008	 15	CERTIFICATE by Walmart Stores, Inc. of Compliance with Local Rule 16.3 and Notice of Willingness to Participate in Lanham Act Mediation (Valdetero, Jena) (Entered: 02/19/2008)
02/27/2008	 16	STATUS Report by Clemens Franek (Roth, Mark) (Entered: 02/27/2008)
02/27/2008	 17	NOTICE by Clemens Franek re status report 16 (Roth, Mark) (Entered: 02/27/2008)
03/03/2008	 18	<i>Target Corporation's ANSWER to Complaint with Jury Demand, COUNTERCLAIM filed by Target Corporation against Clemens Franek and Disclosure Statement.</i> by Target Corporation(Gollwitzer, Arthur) (Entered: 03/03/2008)
03/04/2008	 19	MOTION by Defendant Walmart Stores, Inc. for extension of time to file answer <i>or otherwise plead Agreed</i> (Valdetero, Jena) (Entered: 03/04/2008)








03/04/2008	 20	Agreed NOTICE of Motion by Jena M. Valdetero for presentment of motion for extension of time to file answer 19 before Honorable Robert M. Dow Jr. on 3/13/2008 at 09:15 AM. (Valdetero, Jena) (Entered: 03/04/2008)
03/05/2008	 21	MINUTE entry before Judge Robert M. Dow Jr.: Status hearing held on 3/5/2008. MOTION by Defendant Walmart Stores, Inc. for extension of time to file answer or otherwise plead Agreed 19 is granted to and including 3/18/08. Status hearing set for 4/17/2008 at 09:00 AM.Mailed notice (tbk,) (Entered: 03/05/2008)
03/18/2008	 22	ANSWER to Complaint <i>and Affirmative Defenses</i> by Walmart Stores, Inc.(Paskar, Mark) (Entered: 03/18/2008)
03/19/2008	 23	Corporate Disclosure STATEMENT by Walmart Stores, Inc. (Paskar, Mark) (Entered: 03/19/2008)
03/26/2008	 24	RESPONSE by Plaintiff Clemens Franek to answer to complaint 22 <i>Walmart Stores, Inc.'s Affirmative Defenses</i> (Roth, Mark) (Entered: 03/26/2008)
03/26/2008	 25	RESPONSE by Plaintiff Clemens Franek to answer to complaint, counterclaim 18 <i>by Target Corporation</i> (Roth, Mark) (Entered: 03/26/2008)
03/26/2008	 26	NOTICE by Clemens Franek re Response 25 , Response 24 <i>Answer to Wal-Mart Stores, Inc.'s Affirmative Defenses and Answer to Target Corporation's Affirmative Defenses and Counterclaims</i> (Roth, Mark) (Entered: 03/26/2008)
04/15/2008	 27	MOTION by Plaintiff Clemens Franek to consolidate cases (Roth, Mark) (Entered: 04/15/2008)
04/15/2008	 28	NOTICE of Motion by Mark Daniel Roth for presentment of motion to consolidate cases 27 before Honorable Robert M. Dow Jr. on 4/17/2008 at 09:00 AM. (Roth, Mark) (Entered: 04/15/2008)
04/17/2008	 29	MINUTE entry before Judge Honorable Robert M. Dow, Jr: Status hearing held on 4/17/2008. Status hearing set for 5/21/2008 at 09:00 AM.Mailed notice (tbk,) (Entered: 04/17/2008)
04/18/2008	 30	MINUTE entry before Judge Honorable Robert M. Dow, Jr: Stipulated Motion to Consolidate 27 Two Related Actions on Consent Pursuant to FRCP 42(1) is granted. Case 08 C 1313, Jay Franco & Sons, Inc. vs. Clemens Franek, is found to be related to the above-entitled action and is ordered consolidated for all purposes. Defendant Franek shall file his answer to the complaint within 10 days of this Order. Both parties shall serve their Initial Disclosures under Rule 26 within 10 days of this Order. Both parties shall join in the existing discovery schedule in the prior action: Fact discovery to be completed by 12/12/2008; Opening expert reports are due 1/16/2009; Rebuttal expert reports due by 3/6/09; Expert discovery will be completed by 4/3/2009. Mailed notice (jmp,) (Entered: 04/18/2008)
05/02/2008	 31	MOTION by Plaintiff Clemens Franek for leave to file <i>Answer to Complaint, Affirmative Defenses and Counterclaims</i> (Attachments: # 1 Answer, Affirmative Defenses and Counterclaims)(Roth, Mark) (Entered: 05/02/2008)
05/02/2008	 32	NOTICE of Motion by Mark Daniel Roth for presentment of motion for leave to file 31 before Honorable Robert M. Dow Jr. on 5/7/2008 at 09:15 AM. (Roth, Mark) (Entered: 05/02/2008)

05/06/2008	 33	MINUTE entry before Judge Honorable Robert M. Dow, Jr: MOTION by Plaintiff Clemens Franek for leave to file 31 Answer to Complaint, Affirmative Defenses and Counterclaims is granted. Notice of Motion date of 5/7/078 is stricken.Mailed notice (tbk,) (Entered: 05/06/2008)
05/06/2008	 34	ANSWER to COMPLAINT for declaratory judgment, affirmative defenses and COUNTERCLAIM filed by Clemens Franek against Jay Franco & Sons, Inc. (jmp,). (Entered: 05/20/2008)
05/16/2008	 41	MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>PLAINTIFF JAY FRANCO & SONS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT</i> . (aac,) (Entered: 08/28/2008)
05/16/2008	 42	MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Notice Of Motion For Partial Summary Judgment</i> . (aac,) (Entered: 08/28/2008)
05/16/2008	 43	MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco & Sons, Inc's Memorandum In Support Of Its Motion For Partial Summary Judgment</i> (aac,) (Entered: 08/28/2008)
05/16/2008	 44	MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco & Sons, Inc.'s Local Rule 56.1(a)(3) Statement Of Material Facts As To Which There Is No Genuine Issue</i> (aac,) (Entered: 08/28/2008)
05/16/2008	 45	MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Appendix of Exhibits In Support of Jay Franco & Sons, Inc.'s Partial Motion For Summary Judgment</i> (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Errata 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26)(aac,) (Entered: 08/29/2008)
05/16/2008	 57	DECLARATION of Robert John Anders by Jay Franco & Sons, Inc. <i>In Support Of Jay Franco & Sons, Inc.'s Partial Motion For Summary Judgment</i> (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N)(aac,) (Entered: 09/02/2008)
05/19/2008	 46	<i>Jay Franco & Sons, Inc.'s</i> NOTICE of Motion by Ezra Sutton for presentment of motion for judgment 41 before Honorable Robert M. Dow Jr. on 5/21/2008 at 09:00 AM. (aac,) (Entered: 08/29/2008)
05/20/2008	 35	<i>Jay Franco & Sons, Inc.'s</i> ANSWER to counterclaim <i>filed by Clemens Franek</i> by Jay Franco & Sons, Inc.(Sutton, Ezra) (Entered: 05/20/2008)
05/20/2008	 37	MINUTE entry before the Honorable Robert M. Dow, Jr: The above-entitled cases have been consolidated for all purposes. A motion for summary judgment 10 was inadvertently filed in Case 08 C 1313 and should have been filed in 08 C 58. All further pleadings to be filed only in 08 C 58. Mailed notice (ca,) (Entered: 05/22/2008)
05/21/2008	 36	MINUTE entry before the Honorable Robert M. Dow, Jr:Status hearing held on 5/21/2008. Response to motion for summary judgment (filed inadvertently in consolidated case 08 c 1313) is due on or before 7/21/08. Reply brief will be due, if

		no expert, on or before 8/4/08 or on 8/18/08 if there is an expert. Ruling on motion for summary judgment will be by mail. Status hearing set for 11/13/2008 at 09:00 AM.)Mailed notice (tbk,) (Entered: 05/21/2008)
07/21/2008	 47	MEMORANDUM by Clemens Franek in Opposition to motion for summary judgment 41 (Attachments: # 1 Declaration Franek, # 2 Exhibit Beach Towel shapes, # 3 Exhibit Notice to REI, # 4 Exhibit Claim Charts)(aac,) (Entered: 08/29/2008)
07/21/2008	 48	RESPONSE by Clemens Franek Opposition to MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>PLAINTIFF JAY FRANCO & SONS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT</i> 41 <i>Response to Statement of Facts</i> (aac,) (Entered: 09/02/2008)
07/31/2008	 38	MOTION by Counter Defendant Jay Franco & Sons, Inc. for extension of time to file response/reply to <i>Clemens Franek's Response to Jay Franco & Sons, Inc.'s Motion for Summary Judgment</i> (Attachments: # 1 Text of Proposed Order Stipulated Consent Order)(Sutton, Ezra) (Entered: 07/31/2008)
07/31/2008	 39	MINUTE entry before the Honorable Robert M. Dow, Jr: MOTION by Counter Defendant Jay Franco & Sons, Inc. for extension of time to file reply to Clemens Franek's Response to Jay Franco & Sons, Inc.'s Motion for Summary Judgment 38 , from 8/4/08 to and including 8/14/08, is Granted. Mailed notice (tbk,) (Entered: 07/31/2008)
08/14/2008	 40	MINUTE entry before the Honorable Ruben Castillo: Motion hearing held. Plaintiff's motion for leave to file reply memorandum in support of its motion for partial summary judgment of law in excess of 15 pages is granted. Reply brief is limited to 24 pages. Mailed notice (slb,) (Entered: 08/14/2008)
08/14/2008	 49	MINUTE entry before the Honorable Ruben Castillo: Motion hearing held. Plaintiff's motion for leave to file reply memorandum in support of its motion for partial summary judgment of law in excess of 15 pages is granted. Reply brief is limited to 24 pages. Mailed notice (aac,) (Entered: 09/02/2008)
08/14/2008	 50	REPLY by Jay Franco & Sons, Inc. to memorandum in opposition to motion 47 , response in opposition to motion 48 <i>Plaintiff jay Franco & Sons, Inc.'s Reply memorandum in Support of its Motion for Partial Summary Judgment</i> (Attachments: # 1 Supplement Plaintiff Franco's Responses to Defendant's Statement of Material Facts (1 - 29), # 2 Supplement Plaintiff jay Franco's Responses to Franek's Objections)(aac,) (Entered: 09/02/2008)
08/20/2008	 51	MOTION by Defendant Clemens Franek for leave to file <i>Sur-Reply Brief</i> (aac,) (Entered: 09/02/2008)
08/20/2008	 52	NOTICE of Motion by Mark Daniel Roth for presentment of motion for leave to file 21 before Honorable Robert M. Dow Jr. on 8/28/2008 at 09:15 AM. (aac,) (Entered: 09/02/2008)
08/22/2008	 53	RESPONSE by Jay Franco & Sons, Inc.in Opposition to MOTION by Defendant Clemens Franek for leave to file <i>Sur-Reply Brief</i> 51 <i>Plaintiff Jay Franco & Sons, Inc.'s Opposition to Defendant's Motion for Leave to File Sur-Reply Brief</i> (aac,) (Entered: 09/02/2008)

08/25/2008	 54	MINUTE entry before the Honorable Robert M. Dow, Jr: The Court has before it Defendant's motion for leave to file a sur-reply brief 21 and Plaintiff's opposition 23 to that motion. The Court will take the motion under advisement and issue a ruling by mail after it has examined the reply brief, the motion, and the response. Notice of motion date of 8/28/08 is stricken and no appearances are necessary on that date. Mailed notice (aac,) (Entered: 09/02/2008)
08/28/2008	 55	MINUTE entry before the Honorable Robert M. Dow, Jr: Enter Following Minute Order nunc pro tunc as of 4/17/08: Stipulated Motion to Consolidate 27 Two Related Actions on Consent Pursuant to FRCP 42(1) is granted. Case 08 C 1313, Jay Franco & Sons, Inc. vs. Clemens Franek, is found to be related to the above-entitled action and is ordered consolidated for all purposes. Defendant Franek shall file his answer to the complaint within 10 days of this Order. Both parties shall serve their Initial Disclosures under Rule 26 within 10 days of this Order. Both parties shall join in the existing discovery schedule in the prior action: Fact discovery to be completed by 12/12/08; Opening expert reports are due 1/16/09; Rebuttal expert reports due by 3/6/09; Expert discovery will be completed by 4/3/09. (FOR ALL FURTHER PROCEEDINGS SEE CASE 08 C 58, Franek vs. Walmart Stores.) Mailed notice (aac,) (Entered: 09/02/2008)
08/28/2008	 56	MINUTE entry before the Honorable Robert M. Dow, Jr: The above-entitled case having been consolidated for all purposes with Case No. 08 C 58, Franek v. Walmart Stores, Inc., et al, It is Ordered that 08 C 1313, Jay Franco & Sons, Inc. v. Franek, is hereby dismissed and all future pleadings are to be filed in 08 C 58 only. Mailed notice (aac,) (Entered: 09/02/2008)
09/09/2008	 58	MINUTE entry before the Honorable Robert M. Dow, Jr: The motion by Defendant Franek for leave to file a sur-reply brief 51 is denied at this time. If the Court determines in course of its consideration of the motion that further argument from Defendant Franek is warranted, the Court will request a sur-reply at that time. Mailed notice (tbk,) (Entered: 09/09/2008)
10/07/2008	 59	MOTION by Counter Defendants Jay Franco & Sons, Inc., Jay Franco & Sons, Inc., Counter Claimants Clemens Franek, Target Corporation, Clemens Franek, Plaintiff Clemens Franek, Defendants Walmart Stores, Inc., Target Corporation for extension of time to complete discovery <i>Agreed Motion Requesting an Extension of Time to Complete Discovery and Requesting a Settlement Conference</i> (Attachments: # 1 Text of Proposed Order Agreed Consent Order Extending the Time to Complete Discovery and Ordering a Settlement Conference)(Sutton, Ezra) (Entered: 10/07/2008)
10/08/2008	 60	MINUTE entry before the Honorable Robert M. Dow, Jr: MOTION by Counter Defendants Jay Franco & Sons, Inc., Jay Franco & Sons, Inc., Counter Claimants Clemens Franek, Target Corporation, Clemens Franek, Plaintiff Clemens Franek, Defendants Walmart Stores, Inc., Target Corporation for extension of time to complete discovery and Requesting a Settlement Conference 59 is granted. ENTER AGREED CONSENT ORDER: Time to complete fact discovery is extended to 3/13/09; date that expert reports are due is extended to 4/16/09; and deadline to complete expert discovery is extended to 7/7/09. A settlement conference will be scheduled with a Judge or a Magistrate Judge if pending motion for summary judgment is not granted. [For further detail see separate order(s).] Mailed notice (aac,) (Entered: 10/09/2008)

10/08/2008	 61	AGREED Consent order extending the time to complete discovery and ordering a settlement conference. Signed by the Honorable Robert M. Dow, Jr on 10/8/2008. (aac,) (Entered: 10/09/2008)
11/06/2008	 62	MINUTE entry before the Honorable Robert M. Dow, Jr:Status hearing date of 11/13/08 is stricken and Status hearing reset for 1/14/2009 at 09:15 AM.Mailed notice (tbk,) (Entered: 11/06/2008)
01/08/2009		(Court only) ***Motions terminated: 41 , 42 , 43 , 44 , 45 . (aac,) (Entered: 01/08/2009)
01/08/2009		(Court only) ***Reopen Document MOTION for partial summary judgment 41 . (jmp,) (Entered: 01/09/2009)
02/18/2009	 63	MOTION by Defendant Walmart Stores, Inc. for extension of time to complete discovery (<i>Agreed</i>) and <i>Requesting a Settlement Conference</i> (Paskar, Mark) (Entered: 02/18/2009)
02/20/2009	 64	NOTICE of Motion by Mark A. Paskar for presentment of motion for extension of time to complete discovery 63 before Honorable Robert M. Dow Jr. on 2/26/2009 at 09:15 AM. (Paskar, Mark) (Entered: 02/20/2009)
02/23/2009	 65	MINUTE entry before the Honorable Robert M. Dow, Jr: MOTION by Defendant Walmart Stores, Inc. for extension of time to complete discovery 63 is Granted. ENTER AGREED CONSENT ORDER EXTENDING THE TIME TO COMPLETE DISCOVERY AND ORDERING A SETTLEMENT CONFERENCE: the deadline to complete fact discovery is extended to 7/13/09; the date that expert reports are due is extended to 8/16/09; and the deadline to complete expert discovery is extended to 11/7/09. Notice of Motion date of 2/26/09 is stricken and no appearances are necessary on that date. [For further detail see separate order(s).] Mailed notice (aac,) (Entered: 02/26/2009)
02/23/2009	 66	AGREED Consent Order extending the time to complete discovery and ordering a settlement conference. Signed by the Honorable Robert M. Dow, Jr on 2/23/2009. (aac,) (Entered: 02/26/2009)
03/13/2009	 67	MINUTE entry before the Honorable Robert M. Dow, Jr:Pursuant to Memorandum Opinion and Order dated 3/13/09, Plaintiffs motion for partial summary judgment 41 is granted as to Count II of its Complaint for Declaratory Judgment and Other Relief and Franeks U.S. Trademark Registration No. 1,502,261 is invalid as functional. Plaintiffs motion for summary judgment 41 is also granted as to Counts I through IV of Clemens Franeks Counterclaims against Jay Franco & Sons.Mailed notice (tbk,) (Entered: 03/13/2009)
03/13/2009	 68	MEMORANDUM Opinion and Order Signed by the Honorable Robert M. Dow, Jr on 3/13/2009.Mailed notice(tbk,) (Entered: 03/13/2009)
03/23/2009	 69	MOTION by Plaintiff Clemens Franek to amend/correct <i>Amend Order of March 13, 2009</i> (Attachments: # 1 Text of Proposed Order)(Roth, Mark) (Entered: 03/23/2009)
03/23/2009	 70	NOTICE of Motion by Mark Daniel Roth for presentment of motion to amend/correct 69 before Honorable Robert M. Dow Jr. on 4/1/2009 at 09:15 AM. (Roth, Mark) (Entered: 03/23/2009)

03/30/2009	 71	MINUTE entry before the Honorable Robert M. Dow, Jr: For the reasons stated below, Franek's motion 69 to amend the Court's March 13, 2009 order 68 pursuant to Fed. R. Civ. P. 59(e) is granted. Notice of motion date of 4/1/09 is stricken and no appearances are necessary on that date. [For further details see minute order.] Mailed notice (aac,) (Entered: 03/31/2009)
03/31/2009	 72	ENTERED JUDGMENT Signed by the Deputy Clerk on 3/31/2009.Mailed notice(tbk,) (Entered: 03/31/2009)
03/31/2009	 73	(Court only) ***Civil Case Terminated. (aac,) (Entered: 03/31/2009)
04/02/2009	 73	(Court only) MAILED trademark report with certified copy of minute order dated 3/13/09, memorandum opinion and order, and minute order dated 3/30/09 to Patent Trademark Office, Alexandria VA. (aac,) (Entered: 04/02/2009)
04/28/2009	 74	NOTICE of appeal by Clemens Franek regarding orders 67 , 72 Filing fee \$ 455, receipt number 07520000000003715292. (Also appealing 08-cv-1313 docket entry no. 26)(Roth, Mark) Modified on 4/28/2009 (kj,). (Entered: 04/28/2009)
04/28/2009	 75	NOTICE by Clemens Franek <i>Notice of Appeal</i> (Attachments: # 1 Notice of Filing Service List)(Roth, Mark) (Entered: 04/28/2009)
04/29/2009	 76	NOTICE of Appeal Due letter sent to counsel of record. (yap,) (Entered: 04/29/2009)

STOP, TERMED, VALDEZ

United States District Court
Northern District of Illinois - CM/ECF LIVE, Ver 3.2.2 (Chicago)
CIVIL DOCKET FOR CASE #: 1:08-cv-01313
Internal Use Only

Jay Franco & Sons, Inc. v. Franek
Assigned to: Honorable Robert M. Dow, Jr
Cause: 28:2201 Declaratory Judgement

Date Filed: 03/05/2008
Date Terminated: 08/28/2008
Jury Demand: Plaintiff
Nature of Suit: 110 Contract: Insurance
Jurisdiction: Federal Question





Plaintiff**Jay Franco & Sons, Inc.**












represented by **Ezra Sutton**
Ezra Sutton, PA
900 Route 9 North
Woodbridge , NJ 07095
732 634 3520
Email: esutton@ezrasutton.com
ATTORNEY TO BE NOTICED











V.






Defendant**Clemens Franek**

represented by **Mark Daniel Roth**
Orum & Roth, LLC
53 West Jackson Boulevard
Suite 1616
Chicago , IL 60604
(312) 922-6262
Email: markdroth@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/05/2008	 1	COMPLAINT filed by Jay Franco & Sons, Inc.; (Exhibits) Jury Demand. Filing fee \$ 350.(Poor Quality Original-Paper Document on File)(gej,) (Entered: 03/06/2008)
03/05/2008	 2	CIVIL Cover Sheet (gej,) (Entered: 03/06/2008)
03/05/2008	 3	(Court only) RECEIPT regarding payment of filing fee paid on 3/5/2008 in the amount of \$350.00, receipt number 10652007. (gej,) (Entered: 03/06/2008)
03/05/2008	 4	SUMMONS Issued as to Defendant Clemens Franek. (gej,) (Entered: 03/06/2008)

03/05/2008	 5	CERTIFICATE Under Rule 7.1 of Related Entities by Jay Franco & Sons, Inc. (gej,) (Entered: 03/06/2008)
03/13/2008	 6	APPLICATION for Leave to Appear Pro Hac Vice on behalf of Jay Franco & Sons, Inc. by Ezra Sutton; Order entered granting leave by Judge Honorable Samuel Der-Yeghiayan. Filing fee \$ 50 paid, receipt number 10652008. (gej,) (Entered: 03/17/2008)
03/25/2008	 7	MINUTE entry before Honorable Judge Samuel Der-Yeghiayan: Initial status hearing set for 05/06/08 at 9:00 a.m. At least four working days before the initial status hearing, the parties shall conduct a FRCP 26(f) conference and file a joint written Initial Status Report, not to exceed five pages in length, and file the Court's Joint Jurisdictional Status Report and deliver courtesy copies to this Court's chambers. The Court's standing orders on the Initial Status Report and Joint Jurisdictional Status Report maybe obtained from Judge Der-Yeghiayan's web page or from this Court's Courtroom Deputy. Counsel for the Plaintiff is warned that failure to serve summons and complaint on Defendant will result in admissal of the action pursuant to FRCP 4. Counsel for Plaintiff is further directed to file with the Clerk of Court, the appropriate return of service and/or waiver of service. Mailed notice (gej,) (Entered: 03/26/2008)
04/15/2008	 8	ATTORNEY Appearance for Defendant Clemens Franek by Mark Daniel Roth (Roth, Mark) (Entered: 04/15/2008)
04/17/2008	 9	EXECUTIVE COMMITTEE ORDER: Case reassigned to the Honorable Robert M. Dow, Jr for all further proceedings. Signed by Executive Committee on 4/17/2008. (gej,) (Entered: 04/23/2008)
04/17/2008	 10	Cases associated: (gej,) (Entered: 04/23/2008)
05/16/2008	 11	MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>PLAINTIFF JAY FRANCO & SONS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT</i> (Sutton, Ezra) (Entered: 05/16/2008)
05/16/2008	 12	MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Notice Of Motion For Partial Summary Judgment</i> (Sutton, Ezra) (Entered: 05/16/2008)
05/16/2008	 13	MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco & Sons, Inc.'s Memorandum In Support Of Its Motion For Partial Summary Judgment</i> (Sutton, Ezra) (Entered: 05/16/2008)
05/16/2008	 14	MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco & Sons, Inc.'s Local Rule 56.1(a)(3) Statement Of Material Facts As To Which There Is No Genuine Issue</i> (Sutton, Ezra) (Entered: 05/16/2008)
05/16/2008	 15	MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Appendix of Exhibits In Support Of Jay Franco & Sons, Inc.'s Partial Motion For Summary Judgment</i> (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26)(Sutton, Ezra) (Entered: 05/16/2008)

05/16/2008	 15	DECLARATION of Robert John Anders by Jay Franco & Sons, Inc. <i>In Support Of Jay Franco & Sons, Inc.'s Partial Motion For Summary Judgment</i> (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N)(Sutton, Ezra) (Entered: 05/16/2008)
05/19/2008	 16	<i>Jay Franco & Sons, Inc.'s</i> NOTICE of Motion by Ezra Sutton for presentment of motion for summary judgment 10 before Honorable Robert M. Dow Jr. on 5/21/2008 at 09:00 AM. (Sutton, Ezra) (Entered: 05/19/2008)
05/19/2008		(Court only) ***Motions terminated: MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Appendix of Exhibits In Support Of Jay Franco & Sons, Inc.'s Partial Motion For Summary Judgment</i> 14 , MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Notice Of Motion For Partial Summary Judgment</i> 11 , MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco & Sons, Inc.'s Local Rule 56.1(a)(3) Statement Of Material Facts As To Which There Is No Genuine Issue</i> 13 , MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco & Sons, Inc.'s Memorandum In Support Of Its Motion For Partial Summary Judgment</i> 12 (gej,) (Entered: 05/19/2008)
07/21/2008	 17	MEMORANDUM by Clemens Franek in Opposition to motion for summary judgment 10 (Attachments: # 1 Declaration Franek, # 2 Exhibit Beach Towel shapes, # 3 Exhibit Notice to REI, # 4 Exhibit Claim Charts)(Roth, Mark) (Entered: 07/21/2008)
07/21/2008	 18	RESPONSE by Clemens Franekin Opposition to MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>PLAINTIFF JAY FRANCO & SONS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT</i> 10 <i>Response to Statement of Facts</i> (Roth, Mark) (Entered: 07/21/2008)
08/14/2008	 19	MINUTE entry before the Honorable Ruben Castillo: Motion hearing held. Plaintiff's motion for leave to file reply memorandum in support of its motion for partial summary judgment of law in excess of 15 pages is granted. Reply brief is limited to 24 pages. Mailed notice (slb,) (Entered: 08/14/2008)
08/14/2008	 20	REPLY by Jay Franco & Sons, Inc. to memorandum in opposition to motion 17 , response in opposition to motion 18 <i>Plaintiff jay Franco & Sons, Inc.'s Reply memorandum in Support of its Motion for Partial Summary Judgment</i> (Attachments: # 1 Supplement Plaintiff Franco's Responses to Defendant's Statement of Material Facts (1 to 29), # 2 Supplement Plaintiff jay Franco's Responses to Franek's Objections)(Sutton, Ezra) (Entered: 08/14/2008)
08/20/2008	 21	MOTION by Defendant Clemens Franek for leave to file <i>Sur-Reply Brief</i> (Roth, Mark) (Entered: 08/20/2008)
08/20/2008	 22	NOTICE of Motion by Mark Daniel Roth for presentment of motion for leave to file 21 before Honorable Robert M. Dow Jr. on 8/28/2008 at 09:15 AM. (Roth, Mark) (Entered: 08/20/2008)
08/22/2008	 23	RESPONSE by Jay Franco & Sons, Inc.in Opposition to MOTION by Defendant Clemens Franek for leave to file <i>Sur-Reply Brief</i> 21 <i>Plaintiff Jay Franco & Sons, Inc.'s Opposition to Defendant's Motion for Leave to File Sur-Reply Brief</i> (Sutton, Ezra) (Entered: 08/22/2008)

08/25/2008	 24	MINUTE entry before the Honorable Robert M. Dow, Jr:The Court has before it Defendant's motion for leave to file a sur-reply brief 21 and Plaintiff's opposition 23 to that motion. The Court will take the motion under advisement and issue a ruling by mail after it has examined the reply brief, the motion, and the response. Notice of motion date of 8/28/08 is stricken and no appearances are necessary on that date.Mailed notice (tbk,) (Entered: 08/25/2008)
08/28/2008	 25	MINUTE entry before the Honorable Robert M. Dow, Jr: Enter Following Minute Order nunc pro tunc as of 4/17/08: Stipulated Motion to Consolidate 27 Two Related Actions on Consent Pursuant to FRCP 42(1) is granted. Case 08 C 1313, Jay Franco & Sons, Inc. vs. Clemens Franek, is found to be related to the above-entitled action and is ordered consolidated for all purposes. Defendant Franek shall file his answer to the complaint within 10 days of this Order. Both parties shall serve their Initial Disclosures under Rule 26 within 10 days of this Order. Both parties shall join in the existing discovery schedule in the prior action: Fact discovery to be completed by 12/12/08; Opening expert reports are due 1/16/09; Rebuttal expert reports due by 3/6/09; Expert discovery will be completed by 4/3/09. (FOR ALL FURTHER PROCEEDINGS SEE CASE 08 C 58, Franek vs. Walmart Stores.) Mailed notice (aac,) (Entered: 08/28/2008)
08/28/2008	 26	MINUTE entry before the Honorable Robert M. Dow, Jr:The above-entitled case having been consolidated for all purposes with Case No. 08 C 58, Franek v. Walmart Stores, Inc., et al, It is Ordered that 08 C 1313, Jay Franco & Sons, Inc. v. Franek, is hereby dismissed and all future pleadings are to be filed in 08 C 58 only.Mailed notice (rp,) (Entered: 08/29/2008)
01/08/2009		(Court only) ***Motions terminated: 10 , 21 . (aac,) (Entered: 01/08/2009)
03/13/2009	 27	MINUTE entry before the Honorable Robert M. Dow, Jr:Plaintiffs motion for partial summary judgment 41 is granted as to Count II of its Complaint for Declaratory Judgment and Other Relief and Franeks U.S. Trademark Registration No. 1,502,261 is invalid as functional. Plaintiffs motion for summary judgment 41 is also granted as to Counts I through IV of Clemens Franeks Counterclaims against Jay Franco & Sons. (Original Minute Order and Memorandum Opinion and Order docketed in Case No. 08 C 58.)Mailed notice (tbk,) (Entered: 03/13/2009)